

STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL

In the Matter of:

Pep Boys # 995 El Centro Store
950 North Imperial Highway
El Centro California 92243
EPA ID No. CAL 000129288

Pep Boys Auto
3111 W. Allegheny Avenue
Philadelphia, PA 19132

Respondent.

Docket HWCA 2005-0921

CONSENT ORDER

Health and Safety Code
Section 25187

The Department of Toxic Substances Control (Department) and
Pep Boys Auto (Respondent) enter into this Consent Order (Order) and agree as
follows:

1. Respondent generates and handles hazardous waste at
950 North Imperial Highway, El Centro, California, 92243 (Site).
2. The Department inspected the Site on December 8, 2004 and
July 14, 2005.
3. The Department alleges the following violations:
 - 3.1. Respondent violated Health and Safety Code section 25201 in that on
or about December 8, 2004 and July 14, 2005, Respondent illegally stored
containers by not properly labeling said containers as required under
California Code of Regulations, title 22, section 66262.34, subsection (f).
 - 3.2. Respondent violated California Code of Regulations, title 22,

section 66265.173 in that on or about December 8, 2004 and July 14, 2005, Respondent failed to keep closed the following containers: one 300-gallon tank of antifreeze, one 55-gallon drum of used oil, one 55-gallon drum of used oil filters, and one 30- gallon garbage can with spent aerosol cans.

3.3. Respondent violated California Code of Regulations, title 22, section 66265.53, in that on or about December 8, 2004 and July 14, 2005, Respondent did not maintain a Contingency Plan at the Site.

3.4. Respondent violated California Code of Regulations, title 22, section 66265.16, in that on about December 8, 2004 and July 14, 2005; Respondent did not have a schedule for training staff in hazardous waste management practices. Respondent also did not maintain any records of staff being training in hazardous waste management.

4. The parties wish to avoid the expense of litigation and to ensure prompt compliance.

5. Jurisdiction exists pursuant to Health and Safety Code section 25187.

6. Respondent waives any right to a hearing in this matter.

7. This Consent Order shall constitute full settlement of the violations alleged above, but does not limit the Department from taking appropriate enforcement action concerning other violations.

8. Respondent admits the violations alleged.

SCHEDULE FOR COMPLIANCE

9. Respondent shall comply with the following:

9.1. Immediately, Respondent shall place hazardous waste labels and

complete all sections of the hazardous waste labels once hazardous waste is introduced into the containers. At all times Respondent shall fill in the date on the label for all hazardous waste that is placed in the container. Respondent shall label drums and tanks as a hazardous waste and follow all other applicable generator requirements for hazardous wastes.

9.2. Respondent shall keep lids closed on all hazardous waste containers unless adding or removing wastes.

9.3. Respondent must immediately update its Contingency Plan following all applicable hazardous waste generator requirements.

9.4. Respondent must prepare a training schedule describing introductory and continuing training to be provided to staff in proper hazardous waste management practices or procedures. A person trained in hazardous waste management must direct the training program and facility personnel must successfully complete the training program to assure compliance with hazardous waste requirements. Respondent must maintain records of such training for at least three years at the facility where the waste is generated.

10. Submittals: All submittals from Respondent pursuant to this Consent Order shall be sent simultaneously to:

Yvonne Sanchez, Chief
Southern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

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And to:

Juan Jimenez, Chief
San Diego Border Unit
Southern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

10.1. Communications: All approvals and decisions of the Department made regarding such submittals and notifications shall be communicated to Respondent in writing by a Branch Chief, Department of Toxic Substances Control, or his/her designee. No informal advice, guidance, suggestions, or comments by the Department regarding reports, plans, specifications, schedules, or any other writings by Respondent shall be construed to relieve Respondent of its obligation to obtain such formal approvals as may be required.

10.2. Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Consent Order fails to comply with the Order or fails to protect public health or safety or the environment, the Department may return the document to Respondent with recommended changes and a date by which Respondent must submit to the Department a revised document incorporating the recommended changes.

10.3. Compliance with Applicable Laws: Respondent shall carry out this Order in compliance with all local, State, and federal requirements, including but not limited to requirements to obtain permits and to assure worker safety.

10.4. Endangerment during Implementation: In the event that the Department determines that any circumstances or activity, whether or not pursued

in compliance with this Consent Order, is creating an imminent or substantial endangerment to the health or welfare of people on the site or in the surrounding area or to the environment, the Department may order Respondent to stop further implementation for such period of time as needed to abate the endangerment. Any deadline in this Consent Order directly affected by a Stop Work Order under this section shall be extended for the term of such Stop Work Order.

10.5. Liability: Nothing in this Consent Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Respondent, except as provided in this Consent Order. Notwithstanding compliance with the terms of this Consent Order, Respondent may be required to take further actions as are necessary to protect public health or welfare or the environment.

10.6. Site Access: Access to the Site shall be provided at all reasonable times to employees, contractors, and consultants of the Department, and any agency having jurisdiction. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Department and its authorized representatives may enter and move freely about all property at the Site at all reasonable times for purposes including but not limited to: inspecting records, operating logs, and contracts relating to the Site; reviewing the progress of Respondent in carrying out the terms of this Consent Order; and conducting such tests as the Department may deem necessary. Respondent shall permit such persons to inspect and copy all

records, documents, and other writings, including all sampling and monitoring data, in any way pertaining to work undertaken pursuant to this Consent Order.

10.7. Sampling, Data, and Document Availability: Respondent shall permit the Department and its authorized representatives to inspect and copy all sampling testing, monitoring, and other data generated by Respondent or on Respondent's behalf in any way pertaining to work undertaken pursuant to this Consent Order. Respondent shall allow the Department and its authorized representatives to take duplicates of any samples collected by Respondent pursuant to this Consent Order. Respondent shall maintain a central depository of the data, reports, and other documents prepared pursuant to this Consent Order. All such data, reports, and other documents shall be preserved by Respondent for a minimum of six years after the conclusion of all activities under this Consent Order. If the Department requests that some or all of these documents be preserved for a longer period of time, Respondent shall either comply with that request, deliver the documents to the Department, or permit the Department to copy the documents prior to destruction. Respondent shall notify the Department in writing at least six months prior to destroying any documents prepared pursuant to this Consent Order.

10.8. Government Liabilities: The State of California shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondent or related parties specified in paragraph 12.3, in carrying out activities pursuant to this Consent Order, nor shall the State of California be held as a party to any contract entered into by Respondent or its agents in carrying out activities pursuant to this Consent Order.

10.9. Incorporation of Plans and Reports: All plans, schedules, and reports that require Department approval and are submitted by Respondent pursuant to this Consent Order are incorporated in this Consent Order upon approval by the Department.

10.10. Extension Requests: If Respondent is unable to perform any activity or submit any document within the time required under this Consent Order, the Respondent may, prior to expiration of the time, request an extension of time in writing. The extension request shall include a justification for the delay.

10.11. Extension Approvals: If the Department determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

PAYMENTS:

11. Within 30 days of the effective date of this Consent Order, Respondent shall pay the Department a total of \$8,000.00, of which \$162.59 is a penalty and \$7,837.41 is reimbursement of the Department's costs. Respondent's check shall be made payable to Department of Toxic Substances Control, and shall identify the Respondent and Docket Number (Docket HWCA 2005-0921). Respondent shall deliver the penalty payment together with the attached Payment Voucher to:

Department of Toxic Substances Control
Accounting Office
1001 I Street, 21st floor
P. O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Yvonne Sanchez, Chief
Southern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, California 90630

And to:

Juan Jimenez, Chief
San Diego Border Unit
Southern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
9174 Sky Park Court, Suite 150
San Diego, California 92123

If Respondent fails to make payment as provided above, Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code section 25360.1 and to pay all costs incurred by the Department in pursuing collection including attorney's fees.

OTHER PROVISIONS

12.1. Additional Enforcement Actions: By agreeing to this Consent Order, the Department does not waive the right to take further enforcement actions, except to the extent provided in this Consent Order.

12.2. Penalties for Noncompliance: Failure to comply with the terms of this Consent Order may subject Respondent to civil penalties and/or punitive damages for any costs incurred by the Department or other government agencies as a result of such failure, as provided by Health and Safety Code section 25188 and other applicable provisions of law.

12.3. Parties Bound: This Consent Order shall apply to and be binding upon Respondent and its officers, directors, agents, receivers, trustees, employees,

contractors, consultants, successors, and assignees, including but not limited to individuals, partners, and subsidiary and parent corporations, and upon the Department and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Consent Order.

12.4. Effective Date: The effective date of this Consent Order is the date it is signed by the Department.

12.5. Integration: This agreement constitutes the entire agreement between the parties and may not be amended, supplemented, or modified, except as provided in this agreement.

Dated: July 18, 2006

Original signed by Ellen Frank
Ellen Frank
Assistant Vice President and
Supervising Counsel

Dated: July 21, 2006

Original signed by Juan Manuel Jimenez
Juan Manuel Jimenez, Chief
San Diego Border Unit
Southern California Branch
Statewide Compliance Division
Department of Toxic Substances Control